

Remarks

Applicant requests reconsideration on the merits of the above-referenced patent application.

I. Acknowledgment of Withdrawal of Rejections Based on 35 U.S.C. §§102(e) & 103(a)

Applicant acknowledges that the claim rejections based on 35 U.S.C. §§102(e) and 103(a) set forth in the June 10, 2004 Office action have been withdrawn, and that the only remaining rejection is the double patenting rejection based on U.S. Patent Application No. 10/443,361.

II. Response to the provisional obviousness-type double patenting rejection of claims 85-92, 94-102, 105-113, 116, 119-136, and 138

Claims 85-92, 94-102, 105-113, 116, 119-136, and 138 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 and 44-77 of U.S. Patent Application No. 10/443,361.

Applicant requests withdrawal of this rejection. U.S. Patent Application No. 10/443,361 has not issued as a patent. As noted in MPEP §804(I):

[i]f the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent

In the instant application, the provisional double patenting rejection is the only rejection remaining. Accordingly, it should be withdrawn.

Because the provisional rejection must be withdrawn based on the above reason alone, Applicant makes no further representation as to the merits of the provisional rejection. In particular, Applicant makes no representation as to the merits of the statements in the Office action regarding whether the claims in this application are patentably distinct from the claims in U.S. Patent Application No. 10/443,361.

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Response to January 10, 2005 Final Office Action

Appl. No. 09/897,801

February 4, 2005

Applicant believes that no fee is due in connection with this filing. If, however, Applicant does owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. **08-0750**. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or §1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. **08-0750**.

Applicant submits that the application is in condition for allowance, and requests that it be allowed. Applicant requests that the Examiner call the Undersigned if any issues arise that can be addressed over the phone to expedite examination of this application.

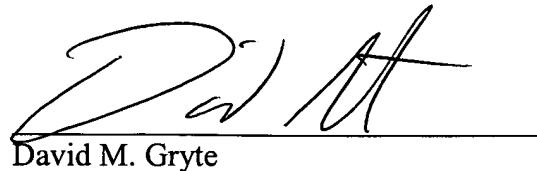
Respectfully submitted,



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CERTIFICATE OF MAILING UNDER 37 CFR § 1.8

I certify that this correspondence is being deposited with the U.S. Postal Service on **February 4, 2005** with sufficient postage as first class mail (including Express Mail per MPEP §512), and addressed to **Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**.



David M. Gryte

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